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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

COALITION FOR HUMANE
IMMIGRANT RIGHTS, *ET AL.*,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES,
DEPARTMENT OF HOMELAND
SECURITY,

Defendant.

No. CV 18-08034 GW (MRWx)

JOINT STATUS REPORT

Status Conference

Date: September 12, 2019

Time: 8:30 a.m.

Honorable George H. Wu
United States District Judge

Plaintiffs' counsel continued:

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1 Following the July 11, 2019 Status Conference and this Court’s Minute Order
 2 (Docket No. 24), counsel for the Plaintiffs and Defendant met and conferred on July 11,
 3 2019, subsequently communicated via email, and held a telephonic conference call with
 4 USCIS counsel and FOIA staff on September 5, 2019. The parties now submit the
 5 following Joint Status Report in advance of the Status Conference set for Thursday,
 6 September 12, 2019, at 8:30 a.m.

7 **Plaintiffs’ Position:**

8 Defendants again seek additional time to respond to a FOIA request now over a
 9 year old. They claim below that USCIS FOIA staff have requested the assistance of
 10 “numerous agency program offices” across USCIS to assist in searching for responsive
 11 records, but do not identify those offices, or state when these unidentified offices were
 12 requested to search for responsive records, or identify any records those unidentified
 13 offices have produced to date.¹ USCIS initiated a “rolling release” of records on June
 14 28, 2019. However, to date the “rolling release” has resulted in Plaintiffs receiving only
 15 what appears to be single slide presentation entitled “WMMI USCIS a Service
 16 Program,” dated December 2017. This document appears to be a plan or proposal to
 17 “increase efficiency and reduce costs through the implementation of successful end to
 18 end e-services.” Defendant fails to state what request it believes this document responds
 19 to, and it is entirely unclear to Plaintiffs what request, if any, it responds to.

20 Now Defendant states below that “continuing a lengthy rolling release would not
 21 be productive,” and “[t]he FOIA staff has determined that an additional, targeted search
 22 for responsive records is necessary.” Defendant does not explain why after about nine
 23 months of claiming it would adopt a “rolling release” approach to the FOIA request, it
 24 now believes a rolling release “would not be productive,” or why the FOIA staff now
 25 believes an additional “targeted” search for responsive records is necessary.

26
 27 ¹ Defendant claims that the data received from these offices consists of “over 133 GB of
 28 records.” This information is entirely meaningless as the records could, for example,
 include simply one database comprising 133 GB of data.

1 It has seemingly taken USCIS about a year to only now identify “several USCIS
 2 program offices for a narrowly targeted new search for responsive records.” The agency
 3 now claims it needs 60 days (to “approximately” November 15, 2019) to complete the
 4 search, and proposes that it then “resume a rolling production” of responsive records to
 5 be completed by “approximately” December 16, 2020. Under Defendant’s approach, it
 6 appears only then will the parties meet and confer to address claimed exemptions and
 7 any issues regarding the scope of the search. Defendant’s proposals are far afield from
 8 the timelines set out in the Freedom of Information Act. It increasingly appears the only
 9 way to resolve this case may be by way of a motion for summary judgment.

10 In the interim, Plaintiffs’ position remains largely unchanged from previous status
 11 reports.

12 I. Timing and manner of release of requested records.

13 1. Index to records released or withheld:

14 Plaintiffs acknowledge receipt of the first FOIA release of approximately 500
 15 pages of documents. The pages were released without an index or any indication what
 16 documents respond to what requests. Plaintiffs request that Defendants produce an index
 17 of documents released indicating what request(s) each document responds to. We believe
 18 the Court. Previously agreed that when releasing documents Defendant must indicate
 19 what document responds to what request.
 20
 21

22 Plaintiffs also request that for any responsive documents for which Defendant
 23 claims an exemption, Defendant list the document in an index stating (i) the date of the
 24 document, (ii) number of pages, (iii) author(s), (iv) recipient(s), (v) subject-line of the
 25 document (unless the subject line is itself exempt in which case Defendant shall state the
 26 subject of the document without disclosing exempt information), and (vi) the
 27
 28

1 exemption(s) claimed. Defendant should release all segregable portions of otherwise
 2 exempt documents. Plaintiffs believe the Court previously indicated that at minimum
 3 Defendant must provide an index to any requested but withheld records.
 4

5 2. Timing of release

6 Plaintiffs see no reason why releasing records should take over a year from now,
 7 and *over two years* after the request was made. The FOIA contemplates release of
 8 requested documents in complex cases involving multiple offices of an agency within
 9 sixty (60) days, not well over two years.

10 Twenty well-defined requests are included in the Plaintiffs' FOIA letter of August
 11 6, 2018. As noted below, as requested by Defendant, Plaintiffs have limited the scope of
 12 their FOIA requests. The majority of documents sought are reports *routinely prepared* by
 13 Defendant regarding backlogs in processing naturalization applications and the basis for
 14 grants or denials of these applications. An appropriate search hardly requires an agency-
 15 wide search of thousands of employees' or applicants' files located throughout the
 16 country. Defendants now state they will complete the search in 60 days. Rather than
 17 leaving it within the agency's discretion as to when it releases documents, what
 18 documents it releases, and how many it releases with each "rolling" release, *Defendant*
 19 *should be required to release the documents with appropriate redactions within 90 days*
 20 *after the 60-day period in which Defendants now say they will complete the search.*
 21 *Defendant should also be required to provide Plaintiffs with an index to the documents*
 22 *located within 75 days (i.e. 15 days after the search is completed).*

23 II. Discussion of Individual Requests

- 24 1. All documents that report to USCIS Headquarters and those generated by USCIS
 25 Headquarters on numbers of approvals and denials of N-400 naturalization
 26 applications including but not limited to data compilations that in any way
 27 provide the reasons for denials of N-400 naturalization applications.

28 Plaintiffs have agreed to limit this request to documents in (1) USCIS's

1 Headquarters (including the Executive Secretariat, the Field Operations Directorate
 2 (FOD), and the Office of Performance and Quality Management (OPQ)), (2) the
 3 National Benefits Center (NBC), and (3) the four USCIS Regional Offices for records
 4 created between January 1, 2016, to October 2, 2018 (the date USCIS commenced its
 5 records search following receipt of Plaintiff's FOIA request). Hereinafter the
 6 Headquarters, NBC and four Regional Offices are referred to as the "Responsive
 7 Components." Plaintiffs have also agreed with regards *all* requests, unless noted below,
 8 that USCIS will not be required to search A-file records or produce records that pertain
 9 to any specific individual N-400 application.

- 10
- 11 2. All documents compiling data submitted by one or more of the agency's
- 12 locations processing or adjudicating N-400 naturalization applications or
- 13 produced by USCIS Headquarters related to the volume of or reasons for RFEs
- 14 ("Requests For Evidence") and NOID ("Notices of Intent to Deny")
- 15 notifications issued in N-400 cases.\

16 Plaintiffs have agreed that Request 2 may be limited to searches within the
 17 Responsive Components for responsive records created between January 1, 2016, to
 18 October 2, 2018 (the date USCIS commenced its records search following receipt of
 19 Plaintiff's FOIA request). Plaintiffs agree that USCIS need only search for data in the
 20 form of summary agency reports reporting numbers of N-400 applications received,
 21 numbers of N-400 RFE's issued, numbers of N-400 NOIDS issued, and reports re:
 22 primary reasons RFE's are issued on N-400 applications.

- 23
- 24 3. All documents compiling data submitted by one or more of the agency's
- 25 locations processing or adjudicating N-400 naturalization applications or
- 26 produced by USCIS Headquarters related to the delay in processing N-400
- 27 applications.
- 28

1 Plaintiffs have agreed that this request may be limited to searches within the
2 Responsive Components for responsive records created between January 1, 2016, to
3 October 2, 2018 (the date USCIS commenced its records search following receipt of
4 Plaintiff's FOIA request).
5

- 6 4. All documents relating to funds allocated by Congress for the processing and/or
7 adjudication of N-400 applications.

8 The parties' previous status report "joint position" was that USCIS has completed
9 its search for records responsive to this request. USCIS asserts that there are no
10 responsive records because Congress allocates no funding to USCIS for adjudication of
11 N-400's. USCIS asserts that it is fee-for-service funded instead, and N-400 processing is
12 not funded through Congressional appropriations.
13
14

- 15 5. All documents compiling data that show the fees received with naturalization
16 applications, excluding documents relating to individual cases such as receipts,
17 deposits, etc.

18 Plaintiffs have agreed that Request 5 may be limited to searches within USCIS's
19 Headquarters (including the Executive Secretariat, the Field Operations Directorate
20 (FOD), and the Office of Performance and Quality Management (OPC)) for data that
21 shows the amount of fees received by USCIS from N-400 applicants for fiscal years
22 2016 through fiscal year 2018 (Oct. 1, 2015 – Sept. 30, 2018).
23
24

- 25 6. All documents regarding USCIS's allocation of funds to its various facilities and
26 field offices for the processing or adjudication of N-400 applications.
27
28

1 Plaintiffs have agreed that Request 6 may be limited to searches within USCIS's
 2 Responsive Components for documents regarding USCIS's allocation of funds to its
 3 various facilities and field offices for the processing or adjudication of N-400
 4 applications for fiscal years 2016 through fiscal year 2018 (Oct. 1, 2015 – Sept. 30,
 5 2018)
 6

7
 8 7. All documents relating in whole or in part to decisions by USCIS officials
 9 regarding allocations of funds to the processing centers and field offices for the
 10 adjudication of N- 400 applications.

11 Plaintiffs have agreed Request 7 may be limited to searches within USCIS's
 12 Responsive Components for documents relating in whole or in part to decisions by
 13 USCIS officials regarding allocations of funds to the processing centers and field offices
 14 for the adjudication of N- 400 applications for fiscal years 2016 through fiscal year 2018
 15 (Oct. 1, 2015 – Sept. 30, 2018).

16 8. All documents that address or concern delays or backlogs in the processing time
 17 for naturalization applications.

18 Plaintiffs have agreed that Request 8 may be limited to searches within USCIS's
 19 Responsive Components for documents that address or concern delays or backlogs in the
 20 processing time for naturalization applications. In addition, Plaintiffs agree (and believe
 21 Defendant agrees) that Defendant may limit its search of emails to the emails of the
 22 USCIS Director (or Acting Director), USCIS Deputy Director (or Acting Deputy
 23 Director), the FOD Director (or Acting FOD Director) and the FOD Deputy Director (or
 24 Acting Deputy Director) that were sent between March 1, 2017, to October 2, 2018, ("E-
 25 Mail Records") by these individuals and that discuss delays or backlogs in the processing
 26 time for naturalization applications.
 27
 28

1 9. To the extent not provided in response to Request Number 8, all data compilations
2 and spreadsheets addressing in whole or in part delays or backlogs in the
3 processing or adjudication of naturalization applications.

4 Plaintiffs have agreed that Request 9 may be limited to searches within the
5 Responsive Components and believe Defendant agrees should include Defendant's
6 Office of Performance and Quality ("OPQ") for responsive records created between
7 January 1, 2016, to October 2, 2018.

8 10. To the extent not provided in response to a separate request, all documents
9 reporting on: (a) the volume of naturalization applications received; (b) where the
10 applications were received; (c) where the applications were processed and
11 adjudicated; and (d) how long it took to fully process and adjudicate the
12 naturalization applications.

13 Plaintiffs have agreed that Request 10 may be limited to searches within the
14 Responsive Components and OPQ for (1) responsive records created between January 1,
15 2016, to October 2, 2018 and (2) Email Records as defined above.

16 11. All documents relating to inquiries from or responses to members of Congress
17 relating to the delays in processing N-400 applications.

18 Plaintiffs have agreed Defendant may limit the search to the USCIS Office of
19 Legislative Affairs for records received from members of Congress between March 1,
20 2017, and Oct. 2, 2018, that pertain to Congressional inquiries related to delays in N-400
21 processing.

22 12. All documents including but not limited to memoranda, guidance, instructions, or
23 directives issued to facilities, centers, or field offices discussing policy or
24 procedures to be followed in the processing or adjudication of N-400 applications.

25 Plaintiffs have agreed that Request 12 may be limited to searches (1) within the
26 Responsive Components created between Jan. 1, 2016 and Oct. 2, 2018, and (2) Email
27 Records as defined above. Plaintiffs agree that Defendant will compile responsive draft
28

documents and provide Plaintiffs with a list of the draft documents for which an exemption may be asserted including the documents' dates, page lengths, author, recipient(s), and subject matter as set forth in the document. Plaintiffs agree to meet and confer with USCIS about the production of any draft agency material Plaintiffs would like produced that pertains to the final agency documents described herein.

13. All documents and data compilations sent to or prepared by the Administrative Appeals Office addressing the number of pending and decided appeals of denials of N-400 applications and the outcome of those appeals. This request does not seek copies of the individual appeals or decisions.

Plaintiffs have agreed that USCIS will search the USCIS Administrative Appeals Office (AAO), for responsive records created by AAO between Jan. 1, 2016, and Oct. 2, 2018, and USCIS will also search for any summary AAO reports on the outcome of AAO appeals. The search will be limited to summary reports that do not include personally identifiable information pertaining to individual N-400 applicants and appellants.

14. All documents sent to or prepared by USCIS regarding delays in naturalization applications due to problems implementing or using the Electronic Immigration System ("ELIS").

Plaintiffs have agreed that Request 14 may be limited to searches (1) within the Executive Secretariat, the Field Operations Directorate (FOD), and the OPQ, created between Jan. 1, 2016 and Oct. 2, 2018, and (2) Email Records as defined above.

15. All documents and data relied upon in The Department of Homeland Security Ombudsman 2017 Annual Report To Congress regarding the USCIS (at <https://www.dhs.gov/sites/default/files/publications/OHS%20Annual%20Rep011%2020170.pdf>).

Plaintiffs have agreed that Request 15 may be limited to searches (1) within the Executive Secretariat, the FOD, and the OPQ, created between Jan. 1, 2016 and Oct. 2,

2018, and (2) Email Records as defined above. Even if this request seeks records created by another agency, USCIS is required to respond to the extent requested records are in its possession.

16. All documents and data relied upon in The Department of Homeland Security Office of Inspector General Report (OIG) “USCIS Has Been Unsuccessful in Automating Naturalization Benefits Delivery,” dated November 30, 2017 (at <https://www.oig.dhs.gov/reports/2018/uscis-has-been-unsuccessful-automating-naturalization-benefits-delivery/oig-18-23>).

Plaintiffs have agreed that Request 16 may be limited to searches (1) within the Executive Secretariat, the FOD, and the OPQ, created between Jan. 1, 2016 and Oct. 2, 2018, and (2) Email Records as defined above. Even if this request seeks records created by another agency, USCIS is required to respond to the extent requested records are in its possession.

17. All complaints filed by naturalization applicants or those acting on behalf of naturalization applicants regarding inappropriate, abusive, or discriminatory treatment of naturalization applicants by USCIS employees.

Plaintiffs have agreed that Request 17 may be limited to searches (1) within the Executive Secretariat, and the Field Operations Directorate (FOD), created between Jan. 1, 2016 and Oct. 2, 2018, and (2) Email Records as defined above. The Plaintiffs agree that USCIS is not required to search A-files for responsive records.

18. All documents related to a review, update, or revision of the USCIS Fee Review Study described here:
<https://www.federalregister.gov/documents/2016/05/04/2016-10297/us-citizenship-and-immigration-services-fee-schedule>.

Plaintiffs have agreed that Request 18 may be limited to searches (1) within the Executive Secretariat, the FOD, and the OPQ, created between Jan. 1, 2016 and Oct. 2, 2018, and (2) Email Records as defined above.

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2 19. All documents relied upon, issued in response to, or to implement the change in
3 the mission of USCIS announced on February 22, 2018 described
4 here:[https://www.uscis.gov/news/news-releases/uscis-director-l-francis-cissna-](https://www.uscis.gov/news/news-releases/uscis-director-l-francis-cissna-new-agency-mission-statement)
5 new-agency-mission-statement

6 Plaintiffs have agreed that Request 19 may be limited to searches (1) within
7 the Executive Secretariat, the FOD, and the OPQ, created between Jan. 1, 2016 and Oct.
8 2, 2018, and (2) Email Records as defined above.

9 20. All documents received by USCIS from the White House or forwarded by USCIS
10 to the White House regarding in whole or in part the processing or adjudication of
11 naturalization applications.

12 Plaintiffs have agreed that Request 20 may be limited to searches (1) within the
13 Executive Secretariat, the FOD, and the Office of Legislative Affairs, created between
14 Jan. 1, 2016 and Oct. 2, 2018, and (2) Email Records as defined above.

15 **Defendant's Position:**

16 The only issue before the Court in a FOIA case is whether Plaintiff is entitled to
17 particular agency records. The waiver of sovereign immunity under the FOIA
18 establishes the Court's jurisdiction to enjoin an agency from improperly withholding
19 agency records and to order the production of any such improperly withheld agency
20 records. 5 U.S.C. § 552(a)(4)(B); Spurlock v. FBI, 69 F.3d 1010, 1015 (9th Cir. 1995).
21 Under FOIA, an agency's decision to withhold information from a FOIA requester is
22 subject to de novo review by the courts. Hayden v. National Security Agency/Cent. Sec.
23 Serv., 608 F.2d 1381, 1384 (D.C. Cir. 1979), cert. denied, 446 U.S. 937 (1980). Here,
24 Defendant has not withheld records. Defendant needs additional time to complete its
25 search for records and to respond to the Plaintiffs' FOIA request.

26 Based on their review of USCIS records compiled from searches for responsive
27 records, USCIS FOIA has determined an additional search is necessary. Plaintiffs' FOIA
28

request consists of a comprehensive 20-item list seeking records generally related to USCIS's processing of N-400 (naturalization) applications. USCIS FOIA staff had to request the assistance of numerous agency program offices across USCIS to assist in searching for responsive records. The agency program offices, in turn, searched their database systems and files for records potentially responsive to any of the 20 items in the FOIA request and forwarded them to the USCIS FOIA division for review to determine responsiveness. That data compilation resulted in over 133 GB of records. USCIS FOIA staff began processing those records and initiated rolling release of records on June 28, 2019. The FOIA staff has continued processing those documents, but has determined that the records it was provided are not sufficiently responsive to Plaintiffs voluminous and complex FOIA request. Thus, continuing a lengthy rolling release would not be productive. The FOIA staff has determined that an additional, targeted search for responsive records is necessary.

In an effort to obtain a sufficiently responsive compilation of records, USCIS FOIA has identified several USCIS program offices for a narrowly targeted new search for responsive records. USCIS needs to conduct additional searches of the USCIS Field Office Directorate, Office of Chief Financial Officer, Office of Performance and Quality, Office of Legislative Affairs, Administrative Appeals Office, Office of Investigations, Office of Information Technology, and the Electronic Immigration System database.

Accordingly, Defendant proposes the following schedule:

- USCIS will complete the new search in 60 days (approximately November 15, 2019); and
- USCIS will resume a rolling production of responsive records to Plaintiffs within 30 days following completion of the new records search (approximately December 16, 2020).
- Defendant will agree to process approximately 500 pages per month, and provide monthly responses to the Plaintiffs, along with the release of any non-exempt

1 documents/portions of documents.

2 Defendant further proposes that after the FOIA response is complete, the parties
3 will meet and confer regarding any remaining issues to be litigated in this case. If
4 records are withheld and if Plaintiffs challenge the withholdings, the matter should be
5 resolved on motions for summary judgment. “Most FOIA cases are resolved by the
6 district court on summary judgment, with the district court entering judgment as a matter
7 of law.” See Animal Legal Def. Fund v. U.S. Food & Drug Admin., 836 F.3d 987, 989
8 (9th Cir. 2016) (en banc); Lane v. Dep’t of Interior, 523 F.3d 1128, 1134 (9th Cir. 2008);
9 Sakamoto v. EPA, 443 F.Supp.2d 1182, 1188 (N.D. Cal. 2006) (“It is generally
10 recognized that summary judgment is a proper avenue for resolving a FOIA claim.”).
11 The parties will then propose a briefing schedule to the Court. As Defendant has not yet
12 completed its search for records in this case or identified the universe of documents that
13 may be at issue, Defendant cannot propose a briefing schedule at this time.

14 ///

Respectfully submitted,

Dated: September 10, 2019

PETER A. SCHEY
CARLOS R. HOLGUIN
CENTER FOR HUMAN RIGHTS AND
CONSTITUTIONAL LAW

/s/ Peter Schey

Attorneys for Plaintiffs

Dated: September 10, 2019

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CERTIFICATE OF SERVICE

I, Peter Schey, declare and say as follows:

I am over the age of eighteen years of age and am not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 256 S. Occidental Blvd., Los Angeles, CA 90057, in said county and state.

On September 10, 2019 I electronically filed the following document(s):

SUPPLEMENTAL JOINT RULE 26(f) REPORT

with the United States District Court, Central District of California by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Peter Schey

Attorneys for Plaintiffs